IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

Crl.MC.No. 3678 of 2007()

PETITIONER: 1ST ACCUSED

MATHEW PARLIVADAKKETHIL BABY,
PARLIVADAKKETHIL HOUSE, OOTTUPARA P.O.,
KONNI, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No. 3678 OF 2007

Dated this the 10th day of December, 2007

O R D E R

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Sections 447 and 188 read with 34 IPC. Cognizance has already been taken and the case is pending as C.C.1069/04. The petitioner has not entered appearance so far. The case against the other accused is proceeding. Warrant of arrest has been issued against the petitioner. The case stands posted to 7.1.08. The petitioner apprehends imminent arrest in execution of such coercive process issued by the learned Magistrate.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. He is employed abroad. He is coming on leave on 13.12.07. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that

directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in ***Alice George vs. Deputy Superintendent of Police*** [2003 (1) KLT 339].

4. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

5. The learned counsel for the petitioner submits that the petitioner will have to leave for his place of employment within a period of thirty days. He prays that the petitioner may be permitted to appear through counsel before the court below. All offences are summons offences, it is further submitted.

6. It is for the petitioner to appear before the learned Magistrate and seek regular bail. Thereafter, he can certainly make request to the learned Magistrate to exempt him from personal appearance under Section 205 Cr.P.C. and to permit him to be represented by his counsel in the trial court. The learned Magistrate must certainly consider such request and pass appropriate orders on merits as expeditiously as possible.

7. The learned counsel for the petitioner submits that the petitioner shall within seven days of his arrival in India on 13.12.07 surrender before the learned Magistrate and seek regular bail. There may be a direction not to execute the warrant during the said period of seven days, submits the learned counsel for the petitioner.

8. I am satisfied, in the peculiar facts and circumstances of the case, that the request can be accepted. There shall be a

direction to that effect. It is directed that the warrant of arrest issued against the petitioner shall not be executed till 20.12.07. On or before that date, the petitioner shall surrender and seek regular bail from the learned Magistrate.

9. Handover copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

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